

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY JEROME WOMACK,

Petitioner,

v.

J. WALKER, Warden,

Respondent.

No. C 08-3594 MMC (PR)

ORDER TO SHOW CAUSE

On July 28, 2008, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

BACKGROUND

In 2005, in the Superior Court of Contra Costa County (“Superior Court”), petitioner was found guilty of second degree robbery. He was sentenced to a term of thirty-five years to life in state prison. The California Court of Appeal affirmed the conviction, and the California Supreme Court denied review. Thereafter, petitioner sought state habeas corpus relief in the Superior Court, the California Court of Appeal, and the California Supreme Court. All of the state habeas petitions were denied.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person

in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

B. Petitioner’s Claims

Petitioner asserts he is entitled to relief on six separate grounds of ineffective assistance of appellate counsel. Liberally construed, petitioner’s claims are cognizable. See Evitts v. Lucey, 469 U.S. 387, 391-405 (1985) (holding Due Process Clause of Fourteenth Amendment guarantees criminal defendant effective assistance of counsel on first appeal as of right).

CONCLUSION

For the reasons stated above, the Court orders as follows:

1. The Clerk of the Court shall serve by certified mail a copy of this order and the petition (Docket No. 1) on respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.

2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)** days of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with

1 the Court and serving it on respondent's counsel within **thirty (30)** days of the date the
2 answer is filed.

3 3. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
4 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
5 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
6 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
7 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
8 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
9 the date any opposition is filed.

10 4. Petitioner is reminded that all communications with the Court must be served on
11 respondent by mailing a true copy of the document to respondent's counsel.

12 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
13 Court and respondent informed of any change of address and must comply with the Court's
14 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
15 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

16 6. Upon a showing of good cause, requests for a reasonable extension of time will be
17 granted provided they are filed on or before the deadline they seek to extend.

18 IT IS SO ORDERED.

19 DATED: January 29, 2009

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21 MAXINE M. CHESNEY
22 United States District Judge
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